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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/258,609	02/26/1999	HIROSHI KOBATA	EPC-009	4096

26171 7590 02/15/2005

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EXAMINER

KANG, PAUL H

ART UNIT	PAPER NUMBER
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2141

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Please find below and/or attached an Office communication concerning this application or proceeding.



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John F. Hayden
Fish & Richardson
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In re Application of: Kobata et al.)
Application No. 09/258,609)
Filed: February 26, 1999) **NOTICE OF VACATED ACTION**
Atty Docket No.: 11365-008001)
For: ELECTRONIC PARCEL DELIVERY)
SYSTEM)

This is a notice to applicants that the Office communication mailed November 18, 2004 was improper and is hereby vacated. The reasons are set forth below.

On January 3, 2000, applicants established the right of the assignee, E-PARCEL, LLC to take action in this application with a filing under 37 CFR 3.73(b). That paper granted a power of attorney to Mr. John F. Hayden of Fish & Richardson, P.C. Thereafter, on July 19, 2002, Fish & Richardson filed a change of address/power of attorney that associated a customer number to this application. No other papers are of record indicating any other changes in power of attorney or ownership.

On August 16, 2004 and on December 10, 2004, the Office received correspondence signed by one of the inventors, Mr. Robert Gagne of Atabok, Inc. The August 16, 2004 communication had a certificate of mailing date of August 12, 2004 and is therefore considered to be filed on August 12, 2004. In response to that communication, the Office mailed a Notice of Non-Compliant Amendment under 37 CFR § 1.121 that set a one-month period to reply. This communication was in error and is hereby **VACATED**.

For a revocation and appointment of a new power of attorney to be acceptable, applicants must file papers in compliance with 37 CFR § 1.36 and §§ 3.71, 3.73, if appropriate. The assignee must establish the right to take action before the assignee can prosecute the application (see MPEP § 324). The assignee, E-PARCEL LLC, properly established its right to take action in this application on January 3, 2000 but subsequent to that date, no other evidence of a change of ownership is of record. Therefore, Atabok, Inc. does not have authority to take action in this application until further evidence is provided that the ownership has changed.

Under 37 CFR § 1.33(b), amendment and other papers **must** be signed by

- (1) A registered patent attorney or patent agent of record appointed in compliance with § 1.32(b);
- (2) A registered attorney or agent not of record who acts in a representative capacity under the provisions of § 1.34;

- (3) An assignee as provided for under § 3.71(b) of this chapter; or
- (4) All of the applicants (§ 1.41(b)) for patent, unless there is an assignee of the entire interest and such assignee has taken action in the application in accordance with § 3.71 of this chapter.

The amendment filed August 12, 2004 was not signed by a registered patent attorney or agent or by the assignee established under § 3.71. Therefore, the Office should not have entered the improperly signed amendment filed by Mr. Gagne (see MPEP § 714.01(a)).

It is noted that the MPEP § 714.01(a) states, in part, "In an application not under final rejection, applicant should be given a 1-month time period in which to ratify the previously filed amendment (37 CFR 1.135(c))." However, it is noted that 37 CFR § 1.135(c) addresses matters where there is a *bona fide* attempt to advance the application to final action, "but consideration of some matter or compliance with some requirement has been inadvertently omitted" and then applicant "may be given a new time period for reply under § 1.134 to supply the omission (emphasis added)."

A review of the application history indicates that Fish & Richardson properly filed papers from January 3, 2000 until November 5, 2003. There is no record that Fish & Richardson has petitioned to withdraw as attorneys of record and there are no papers indicating the assignee has revoked their power of attorney. In addition, the last Office action on the merits mailed on February 12, 2004 as well as the Notice of Non-Compliance mailed November 18, 2004 were addressed to Fish & Richardson and both Office communications were apparently forwarded to applicants who then responded directly to the Office.

In the face of such steady silence by both the assignee and the attorneys of record relating to the correspondence address, the power of attorney and the filing of amendments, the Office will not grant an extension of time to correct matters relating to the improperly signed (and non-compliant) amendment that was filed on August 12, 2004. The amendment was clearly signed by an improper party so no inadvertent omission occurred and therefore the reply is not considered *bona fide*.

As this amendment has not been entered, and as it was filed on the last day of the statutory period, the application is considered abandoned. A Notice of Abandonment will be forthcoming, with the date of abandonment being August 12, 2004.

If applicants believe the Office has created a problem due to misplaced or misprocessed papers, then applicants' representative of record is invited to contact the undersigned in order to discuss the status of the current application.

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